

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KELLY GENE MOERKE,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. C22-5516-MLP

MINUTE ORDER

The following Minute Order is made at the direction of the Court, the Hon. Michelle L. Peterson, United States Magistrate Judge:

The parties have filed a stipulated motion to award attorney’s fees and expenses to Plaintiff under the Equal Access to Justice Act (“EAJA”). (Dkt. # 16.) EAJA provides that “[a] party seeking an award of fees and other expenses shall,” in addition to other requirements, “allege that the position of the United States was not substantially justified.” 28 U.S.C. § 2412(d)(1)(B). This sentence “requir[es] the applicant simply to ‘allege’ that the position of the United States was not substantially justified.” *Scarborough v. Principi*, 541 U.S. 401, 408 (2004); *see also Grendler v. Kijakazi*, 2023 WL 144157, at *1 (D. Or. Jan. 10, 2023) (denying without prejudice EAJA fee petition lacking an allegation that the government’s position was not

1 substantially justified because “the Court will not infer matters that are mandated under statute to
2 be expressly included in the fee petition.”).

3 The parties’ motion, although stipulated, fails to allege that the position of the United
4 States was not substantially justified. Accordingly, the Court DENIES the motion (dkt. # 16)
5 without prejudice and with leave to file an amended petition that cures the identified deficiency.

6 Dated this 30th day of March, 2023.

7 Ravi Subramanian
8 Clerk of Court

9 By: Tim Farrell
10 Deputy Clerk